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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,369	03/05/2002	Kenichi Murai	15115.020001	7298

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EXAMINER

MCCARTHY, CHRISTOPHER S

ART UNIT	PAPER NUMBER
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2113

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/091,369	Applicant(s) MURAI ET AL.	
	Examiner Christopher S. McCarthy	Art Unit 2113	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: response to arguments.

4

DETAILED ACTION

1. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Ono U.S. Patent 6,728,956.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Ono U.S. Patent 6,728,956.

As per claim 1, Ono teaches a program update apparatus, which is used for updating an operation program through a memory device or a communication line (column 1, lines 64-67), comprising: means for maintaining a second storage area that is separated from a first storage area in which an operation program is stored; means for storing a second operation program in the second storage area in a separate manner from the first operation program stored in the first storage area (column 2, lines 1-12); selective activating means for selectively activating either the first operation program or the second operation program (column 6, lines 6-15); failure detecting means which detects a failure in an activation of an operation program selected to be

Art Unit: 2113

activated or an application program that is operated on the operation program; and a recovering application which alters a setting required for the operation of the application program (column 6, lines 6-29), wherein, in the case when the failure detecting means detects any failure in the activation of the operation program to be selected for activation, another operation program is selected to be activated, and in the case when the failure detecting means detects any failure in activation of the application program, the recovering application is used for recovering the setting required for the operation of the application program (column 6, lines 6-42).

As per claim 2, Ono teaches the program update apparatus according to claim 1, further comprising: informing means which gives information to an external device outside the program upgrade apparatus, wherein, in the case when the updating process of the operation program is not carried out correctly, by the informing means, the information indicating the incorrect updating process is given to an external device outside the program upgrade apparatus (column 9, lines 41-47).

As per claim 3, Ono teaches a program update method, which is used for updating an operation program through a memory device or a communication line, comprising the steps of: storing a second operation program in the second storage area in a separate manner from the first operation program stored in the first storage area (column 1, lines 64-67; column 2, lines 1-12); selectively activating the second operation program at the time of reactivating (column 6, lines 1-15); detecting a failure in an activation of an application program that is operated on the operation program (column 6, lines 6-29); in the case when any failure is detected in the activation of the application program, activating a recovering application which alters a setting

required for the operation of the application program; and altering the setting by using the recovering application (column 6, lines 6-42).

As per claim 4, Ono teaches the program update method according to claim 3, further comprising the step of: in the case when the updating process of the operation program is not carried out correctly, giving the information indicating the incorrect updating process to an external device (column 9, lines 41-47).

Response to Arguments

4. Applicant's arguments filed 2/1/2005 have been fully considered but they are not persuasive.

The applicant argues that there is no teaching, suggestion or disclosure, in Ono, that when a problem occurs in activation of an application program, a recovering application is activated to alter a setting requested for operation of the application program as recited in claim 1 and 3. The examiner respectfully disagrees. In column 7, line 58 to column 8, line 33, Ono teaches wherein two memories contain separate upgrading programs (operation program) that contain their respective applications (application program). When the operation check program (recovering program) discovers an abnormally functioning program, the check program causes the system to use the alternative program. Furthermore, Ono teaches in column 6, lines 6-15, that when the program is operating normally, the system continues. It is when the "program in the selected flash memory operates abnormally" the system executes the alternative program stored in the alternative memory. Ono does teach a recovery program that alters the setting required to obtain a functioning, alternative, but same, application; wherein, the setting altered is the system

Art Unit: 2113

selection of the alternative memory program. In light of the above arguments, the rejected claims stand.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. McCarthy whose telephone number is (571)272-3651. The examiner can normally be reached on M-F, 9 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571)272-3645. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2113

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

csn
April 15, 2005


ROBERT DEANGELO
SUPERVISOR PATENT EXAMINER
TECHNOLOGY CENTER 2100